

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 7 1997

FILED
FEB 7 1997
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Newspaper/Radio Cross-Ownership) MM Docket No. 96-197
Waiver Policy)

COMMENTS OF JOURNAL BROADCAST GROUP, INC.

Richard S. Rodin
Steven F. Morris

Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

February 7, 1997

No. of Copies rec'd
List ABCDE

046

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. THE CURRENT RESTRICTIONS ON NEWSPAPER/RADIO CROSS-OWNERSHIP PLACE NEWSPAPER OWNERS AT A COMPETITIVE DISADVANTAGE IN THE RADIO MARKET TO THE DETRIMENT OF THE PUBLIC INTEREST.	3
III. THE COMMISSION MUST ADJUST ITS EXISTING WAIVER CRITERIA TO REFLECT MARKETPLACE REALITIES.	5
A. Increased Consolidation in the Radio Industry Has Been Endorsed By Congress and Must Be Reflected in the Commission's Waiver Policy.	6
B. The Commission Must Acknowledge the Explosive Growth in Alternative Sources of News and Information.	8
IV. THE COMMISSION SHOULD REVIEW WAIVER REQUESTS ON A MARKET- BY-MARKET BASIS RATHER THAN ESTABLISHING A BRIGHT LINE TEST.	9
V. CONCLUSION.....	11

SUMMARY

Journal Broadcast Group, Inc. ("Journal"), licensee of stations WTMJ-TV, WTMJ(AM) and WKTI-FM, Milwaukee, Wisconsin, supports the Commission's decision to re-examine its newspaper/radio cross-ownership waiver policy. Journal's parent company, Journal Communications, Inc., publishes the Milwaukee Journal Sentinel, a daily newspaper in Milwaukee. Journal first entered the radio market in 1927 when WTMJ(AM) signed on the air. In 1940, Journal became the first company west of the Alleghenies to broadcast an FM signal. WTMJ-TV, Journal's television station in Milwaukee, signed on in 1947, one of the first television stations in the nation. Journal is a true pioneer in the broadcast industry.

Journal has been a leading source of news and public affairs programming in Milwaukee throughout its long and distinguished history. In keeping with that tradition, Journal's stations provide a consistently high quality and quantity of news and public affairs programming. As evidenced by Journal's record of public service to the Milwaukee community, it is clear that there are substantial public benefits that arise from common ownership of radio stations and newspapers in the same market.

The full public interest benefits of common ownership have been limited, however, and newspaper/radio owners have been placed at a competitive disadvantage, because the Commission's cross-ownership policy has not kept pace with the significant changes that have taken place in the radio market. As a result of the Telecommunications Act of 1996, a company now may own as many as eight

stations (five in the same service) in a market. In Milwaukee, there are three companies that already own three stations each and have the ability to acquire more. Journal is at a substantial competitive disadvantage against these companies because it is prevented from acquiring additional stations, and fully realizing the public interest benefits of common ownership.

The current cross-ownership policy also does not adequately reflect the explosion in non-broadcast media that has taken place since the rule first was adopted. Cable television and other multichannel video programming services now are universally available and provide a wide assortment of information and entertainment programming. In addition, an increasing portion of the population has access to the Internet and a nearly infinite array of “voices.”

Based on the increased consolidation in the radio marketplace and the development of alternative media such as cable and the Internet, it is time for the Commission to relax its rigid enforcement of the newspaper/radio cross-ownership policy. The Commission should modify its waiver policy so that a reduction of broadcast voices in the market is no longer a decisive factor against the grant of a waiver. Rather, waivers should be granted when a newspaper owner can demonstrate that the public interest benefits of an acquisition and the number of media voices remaining in the market counteract any decrease in the number of broadcast stations in the market.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Newspaper/Radio Cross-Ownership)	MM Docket No. 96-197
Waiver Policy)	

COMMENTS OF THE JOURNAL BROADCAST GROUP, INC.

Journal Broadcast Group, Inc. ("Journal"), by its attorneys, hereby responds to the Notice of Inquiry released by the Commission in the above-referenced docket on October 1, 1996. Journal supports the Commission's decision to re-examine its newspaper/radio waiver policy. As shown below, the Commission should continue to review waiver requests on a case-by-case basis, but should adjust its traditional waiver standards to reflect more accurately the realities of today's radio marketplace and allow newspaper/radio owners to compete on a level playing field with other radio station owners.

I. INTRODUCTION

Journal is the licensee of broadcast stations WTMJ-TV, WTMJ(AM) and WKTI-FM, Milwaukee, Wisconsin. Its parent company, Journal Communications, Inc., owns The Milwaukee Journal Sentinel, a daily newspaper published in Milwaukee. Journal's co-ownership of the Milwaukee newspaper and

broadcast stations was grandfathered by the Commission in 1975 when it revised Section 73.3555(d) of its Rules to prohibit such cross-ownership.

Journal is a true pioneer in the broadcast field. In 1927, while its parent company was operating a daily newspaper, The Milwaukee Journal, it first entered the Milwaukee radio market, when WTMJ(AM) signed on the air. The Federal Radio Commission, the FCC of that period, encouraged newspaper companies to enter broadcasting because of the newspapers' traditions of journalism and public service. WTMJ(AM) began by broadcasting live music and, over time, added news, public affairs, live sports and public service programming. In 1940, Journal became the first company west of the Alleghenies to broadcast an FM signal on an experimental basis and it began broadcasting what is now WKTI-FM in Milwaukee. WTMJ-TV, Journal's television station in Milwaukee, signed on in 1947, one of the first television stations in the nation.

Throughout this long and distinguished history, Journal's stations have been a leading source of news and public affairs programming in Milwaukee. WTMJ(AM) now broadcasts a minimum of ten hours of local news and public affairs each weekday. WKTI-FM, while principally a music station, includes regular local newscasts during morning and afternoon drive time and broadcasts a weekly analysis of major public affairs issues each weekend. WTMJ-TV carries more than 5½ hours of local news each weekday and an additional 3 hours of local news and public affairs programming on weekends. Based on this record of public service, it is clear, as evidenced by the Journal's situation, that there are substantial public

interest benefits that arise from the ownership of radio stations by newspaper owners in the same market.

Significantly, since the mid-1960s, Journal has operated the broadcast stations as a separate division from the newspaper in both its business and journalism operations. The two divisions compete aggressively for new stories and for business.

Journal supports the Commission's decision to re-examine its waiver policy in this proceeding. There have been significant changes in the radio market since the adoption of the newspaper/radio prohibition and the current application of the cross-ownership restriction places newspaper owners at an enormous competitive disadvantage in their own market. As a result, the Commission should not establish rigid criteria to govern newspaper/radio waiver requests. Rather, it should modify its traditional case-by-case approach to reflect the impact of increased consolidation in the radio market and the explosion in alternative sources of news and information since the rule was adopted.

II. THE CURRENT RESTRICTIONS ON NEWSPAPER/RADIO CROSS-OWNERSHIP PLACE NEWSPAPER OWNERS AT A COMPETITIVE DISADVANTAGE IN THE RADIO MARKET TO THE DETRIMENT OF THE PUBLIC INTEREST.

In the *Notice*, the Commission acknowledges that there have been significant changes in the radio market since it adopted the newspaper/radio cross-ownership prohibition. *Notice* at ¶ 9. The most significant change clearly is the increased consolidation in the industry caused by the increased number of

stations that a single entity may now own in a market. Specifically, with the passage of the Telecommunications Act of 1996, the Commission's rules now permit a single entity to own as many as eight radio stations (no more than 5 of which may be in the same service) in a single market. By raising the limits on local radio station ownership, Congress apparently concluded that the benefits of increased consolidation outweigh any potential loss of voices in a market.

Yet, while the ownership of multiple stations in a market is now permitted and is being extensively utilized, Journal and other grandfathered newspaper/radio combinations have been unable to increase their presence in the radio market. As group owners continue to expand within their chosen markets, the effect of the cross-ownership restriction will be to place newspaper/radio owners at a substantial competitive disadvantage *vis-à-vis* other group owners. The Milwaukee radio market dramatically demonstrates this situation -- while Journal is limited to one AM and one FM station, three of its competitors (Heritage Media, Saga Communications and Clear Channel Communications) will each own three stations with the ability to add five more stations within the Commission's permissible limits.

Accordingly, in reviewing waiver requests, the perceived benefits of the newspaper/radio cross-ownership restriction must be weighed against the detriment to newspaper owners in not being able to compete on a level playing field with other radio station owners. As described in greater detail below, the public interest benefits which underlie the newspaper/radio cross-ownership prohibition have been

reduced significantly as a result of the consolidation of the radio industry. At the same time, alternative sources of news and entertainment are available that more than make up for any reduction in the number of voices as a result of this consolidation. Consequently, the Commission should grant waivers liberally when the effect of a waiver would be to place a newspaper owner on a level playing field with other competitors in the radio market.

III. THE COMMISSION MUST ADJUST ITS EXISTING WAIVER CRITERIA TO REFLECT MARKETPLACE REALITIES.

The Commission has consistently taken the position that the newspaper/radio cross-ownership restrictions rest on the twin goals of promoting diversity of viewpoints and economic competition. *Notice* at ¶ 2. When a waiver of the rule would not materially diminish the diversity of speakers in a market or result in a single entity with substantial market power, the Commission has been willing to waive the cross-ownership restrictions, although usually only on a temporary basis. *Notice* at ¶ 4. In only two cases since the inception of the rule has the Commission granted permanent waivers of the newspaper/broadcast cross-ownership prohibition. 1/

The substantial changes that have taken place since the cross-ownership prohibition first was adopted, however, necessitate a fresh look at the Commission's waiver policy. The Commission's primary concern in its rigid

1/ See *Fox Television Stations, Inc.*, 8 FCC Rcd 5341 (1993); *Field Communications Corp.*, 65 FCC 2d 959 (1977).

enforcement of the prohibition -- that newspapers would unduly dominate their markets if permitted to acquire radio stations -- no longer is warranted.

Accordingly, the Commission's application of the diversity and competition prongs of its public interest analysis must be adjusted to reflect the realities of the current radio marketplace.

A. Increased Consolidation in the Radio Industry Has Been Endorsed By Congress and Must Be Reflected in the Commission's Waiver Policy.

The single most important factor the Commission has used to judge waiver requests is the effect of the proposed transaction on the diversity of voices in the market. 2/ Because the sale of a radio station to a newspaper owner will never increase the number of voices, and usually will result in a decrease number of speakers, the Commission has granted permanent waivers only sparingly. Nevertheless, as the Commission itself recognizes in the *Notice* at ¶ 9, there has been an unmistakable trend toward permissible consolidation in the radio market as a direct result of the Telecommunications Act of 1996, and, under the Commission's rules, a single entity may now own as many as eight radio stations in a market. 3/ These changes almost certainly will result in a decrease in the number of voices in a given market, as already has been seen in Milwaukee.

2/ *Fox Television Stations*, 8 FCC Rcd at 5347.

3/ Telecommunications Act of 1996, § 202(b); *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, FCC 96-90 (rel. March 8, 1996); Section 73.3555(d) of the Commission's Rules.

In considering waiver requests, the Commission's traditional focus on the number of voices in the market must accommodate Congress' approval of the trend toward consolidation in the radio industry. The fact that an acquisition reduces the number of voices in a market no longer should be the decisive factor it was in the past. The reduction in the number of voices caused when a station is sold to a newspaper is no greater than if the station is sold to any other entity that already owns a station in the market -- the only difference is that the former transaction requires a waiver and the latter does not. While denying a waiver to a newspaper owner may delay this reduction in diversity in the short-term, this approach may not necessarily preserve an independent voice in the market. Rather, the result often will be the sale of that station to a different company that already owns multiple stations in the market. Therefore, the diversity benefits of a stringent waiver policy are marginal, at best.

Moreover, in the long run, a restrictive waiver policy likely would harm diversity, rather than promote it, by unnecessarily handicapping one competitor while leaving others free to grow. If newspapers continue to be unduly restrained in their growth in the radio market, as other group owners continue to acquire multiple stations in a market, eventually newspaper owners may find their profits dramatically dwindling, which could have an impact on their co-owned stations' ability to provide news, public affairs and public service programming to the level they have in the past. Given most newspaper owners' long and distinguished history of providing news and public affairs programming on their

radio stations, such as with the Journal stations, this development would not be in the public interest.

This is not to say that waivers should be routinely granted. The *Notice* correctly recognizes that the acquisition of a second or third radio station in a market presents a different issue than the acquisition of a seventh or eighth station. *Notice* at ¶ 20 n.48. At this point, however, Journal, as a newspaper owner, cannot even acquire one additional station to compete with three other companies which will each own three stations in the market. Such a situation makes no sense and the Commission's public interest analysis should be modified to reflect the unique characteristics of each market and the specific stations and owners involved.

B. The Commission Must Acknowledge the Explosive Growth in Alternative Sources of News and Information.

In the *Notice*, the Commission asks whether media other than daily newspapers, radio and television stations should be considered in judging the effect of a waiver on diversity. *Notice* at ¶ 12. This question must be answered in the affirmative.

The significant growth of the cable industry, both in terms of the level of cable penetration and the number of programming sources available, obviously has a substantial impact on the degree to which consumers are dependent on newspaper, radio and television stations for news and information. The Commission correctly notes that many cable systems have developed local news

channels and most systems are obligated to provide local public, education and government (PEG) programming. In combination with national news services that did not exist when the cross-ownership rule first was adopted, such as C-SPAN and CNN, it should be obvious that cable subscribers have access to a wide array of diverse voices. This would also be true for the expanding Direct Broadcast Satellite news and information services now being provided to viewers.

Furthermore, for a growing percentage of the population, the computer is becoming an important supplement to, if not replacement for, traditional media sources. The Internet and services such as America Online provide a greater diversity and number of voices than ever thought possible even a decade ago. For consumers of these services, the reduction in voices that would result from a newspaper's acquisition of a radio station would be barely perceptible.

IV. THE COMMISSION SHOULD REVIEW WAIVER REQUESTS ON A MARKET-BY-MARKET BASIS RATHER THAN ESTABLISHING A BRIGHT LINE TEST.

The *Notice* asks whether the Commission should establish objective criteria for evaluating waiver requests and seeks comment on issues such as how to count the number of voices in a market and how to determine what constitutes a market. *Notice* at ¶ 10.

Journal believes that establishing of bright line rules is inappropriate in the context of waiver requests. By definition, a waiver request involves a situation where the applicant believes circumstances exist that justify a departure

from the Commission's rules. Establishing fixed criteria to govern waiver requests unnecessarily limits the Commission's ability to consider the special circumstances of each case.

Rather than establishing fixed criteria, the Commission should continue to review waiver requests on a case-by-case basis. While the Commission certainly should consider traditional factors such as diversity of voices and market share, it must do so in a way that reflects changing market conditions and gives applicants the flexibility to demonstrate other public interest factors that support a waiver. For example, the fact that an acquisition reduces the number of voices may be outweighed by the fact that the acquirer has a long history of service to the community and a demonstrated commitment to matters of local concern. Similarly, the Commission should consider factors presented by an applicant that demonstrate the availability of alternative sources of local news, such as the number of weekly local papers that are available, the level of cable and DBS penetration and the availability of World Wide Web sites focusing on matters of local concern.

Furthermore, the rigidity of the Commission's test should vary with the number of stations that are already owned, and the number of stations in the market. The acquisition by a newspaper owner of a third or fourth station in a large market will in most cases warrant only minimal concern from a diversity or competitive perspective. Conversely, a newspaper owner's acquisition of a seventh or eighth station in a large market, or a second or third station in a small market,

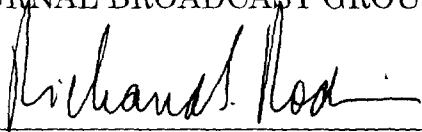
may raise more significant issues. In each situation, the Commission should review the waiver request based on the facts unique to the particular market.

V. CONCLUSION

For the reasons discussed herein, the Commission should establish a more expansive, flexible policy with regard to waivers of the newspaper/radio cross-ownership prohibition that more accurately reflects the realities of the marketplace.

Respectfully submitted,

JOURNAL BROADCAST GROUP

By 

Richard S. Rodin
Steven F. Morris

Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

February 7, 1997